APPENDIX A

MAJORITY AND DISSENTING OPINIONS OF THE SUPREME COURT OF PENNSYLVANIA AND JUDGMENT

Majority Opinion

Filed: March 21, 1967

JONES, J.

This appeal challenges the grant of injunctive relief the effect of which was to restrain certain picketing concededly peaceful in nature.

Logan Valley Plaza, Inc. [Logan], owns a newly-developed and large shopping center, known as the Logan Valley Mall, located at the intersection of two public highways in Logan Township near the City of Altoona, Blair County. At the time of the events related, at this shopping center only two stores were occupied, one by Weiss Markets, Inc. [Weis], a concern engaged in the sale of food and sundry household articles, and the other occupied by Sears department store and automobile service station.[1] The Weis property consists of the store proper, a porch and, directly in front of the porch, a parcel pick-up zone for the loading of purchased goods into customers' cars.[2] Directly in front of the Weis property is a very large p[illegible]ng lot extending toward two public highways from [illegible] highways there are entrances and exits to and fr[illegible] the parking lot. The parking area is owned by Logan and provided for the use of Weis, Sears and any future occupants of store properties in the shopping center. Separating this parking area from the several public highways is a fifteen foot berm.

Weis—whose employees are not union members and were not picketing—opened for business on December 8, 1965.

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[1] Sears is not a party to this litigation.

[2] This area—approximately 4-5 feet in width and 30-40 feet in length—is marked off with yellow lines and is directly in front of the porch.

and, eleven days thereafter, four pickets, members of Amalgamated Food Employees Union, Local 590, AFL-CIO, [Union], appeared.[3] The pickets—ranging in number from 4 to 13—walked back and forth in front of the Weis store, occasionally on the porch of the store but usually in the parcel pick-up zone, on the parking lot and on the berms near the property entrances and exits. The court below found, and it is established by the evidence, that the picketing was peaceful in nature.

Ten days after the picketing began, Weis and Logan instituted an equity action in the Court of Common Pleas of Blair County and that court, *ex parte,* issued a preliminary injunction against the Union. That injunction restrained the Union from: (1) picketing and trespassing on Weis' property, i.e., the store proper, the porch and the parcel pick-up area; (2) picketing and trespassing upon Logan's property, i.e., the parking area and entrances and exits thereto; (3) physically interfering with Weis' business invitees entering or leaving the store or parking area; (4) violence toward Weis' business invitees; (5) interference with Weis' employees in the performance of their duties.[4] Four days thereafter, a hearing was held

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[3] The pickets—employees of nearby Atlantic & Pacific stores which are competitors of Weis—carried signs reading "Weis Market is Non-Union, these employees are not receiving union wages or other benefits" and they passed out handbills which stated—"We appeal to our friends and members of organized labor NOT TO PATRONIZE this non-union market" . . . . "Please Patronize Union Markets! A & P—QUAKER—ACME." . . . . We still retain the right to ask the public NOT to patronize non-union markets and the public has the right NOT TO PATRONIZE non-union markets."

[4] The practical effect was to restrict picketing to the berm areas near the entrances and exits, picketing which could be carried on without danger from traffic on the public highways. The court did attempt, apparently, to limit the number of pickets but the record does not reveal how many pickets were allowed.

on a motion to continue the injunction and, after hearing, the court entered a decree continuing the preliminary injunction. From that decree the instant appeal was taken.

The rationale of the decision in the court below was twofold: (a) that the picketing was upon private property and, therefore, unlawful in manner because it constituted a trespass; (b) that the aim of the picketing was to compel Weis to require its employees to become members of the Union and, therefore, the picketing, albeit peaceful, was for an unlawful purpose.

Our scope of review is well settled. In *Philadelphia Minit-Man Car Wash Corp. v. Building and Construction Trades Council of Phila. & Vicinity,* 411 Pa. 585, 588, 589, 192 A. 2d 378 (1963), we said: "The validity of the preliminary injunction is determined by the well-established rule repeated in Mead Johnson & Co. v. Martin Wholesale Distributors, Inc., 408 Pa. 12, 19, 182 A. 2d 741, 745 (1962): 'Our uniform rule is that, on an appeal from a decree which refuses, [or] grants . . . a preliminary injunction, we will look only to see if there were any apparently reasonable grounds for the action of the court below, and we will not further consider the merits of the case or pass upon the reasons for or against such action, unless it is plain that no such grounds existed or that the rules of law relied on are palpably wrong or clearly inapplicable: (citing authorities).' "

The Union contends that the court below erred in ruling that the picketing constituted a trespass upon private property of Weis and Logan and urges that the parcel pick-up area and the parking lot were not private, but quasi-public, property.[5]

[5] We do not construe the Union's position to be that picketing on the porch of the Weis' property did not constitute a trespass. Our reading of the record indicates that the picketing that did take place on the porch was sporadic at most and that the Union itself discouraged such picketing.

That the Commonwealth has not only the power but the duty to protect and preserve the property of its citizens from invasion by way of trespass is clear beyond question: *Thornhill v. Alabama,* 310 U.S. 88, 105, 60 S. Ct. 736 (1940); *City Line Open Hearth, Inc. v. Hotel, Motel & Club Employees' Union,* 413 Pa. 420, 431, 197 A. 2d 614 (1964); *Wortex Mills, Inc. v. Textile Workers Union of America, CIO,* 369 Pa. 359, 363, 364, 85 A. 2d 851 (1952). Our immediate inquiry is whether, in the factual matrix of the case at bar, the conduct of these pickets constituted an invasion of the private property of Weis and/or Logan. Do the parcel pick-up zone and the parking areas constitute private or quasi-public property?

Our research does not disclose that we have ever determined whether the property in a shopping center, accessory to its main purposes, constituted private or quasi-public property. Resolution of that question involves the consideration of many factors. There is no doubt that this shopping center was not conveyed, donated or otherwise dedicated to the public use generally; neither the record nor common sense would justify such a finding. Both Weis and Logan, the former in opening its store and the latter in creating its shopping center as an area upon which commercial enterprises would be conducted, fully anticipated that that portion of the public interested in patronage of Weis' store and the other commercial enterprises, opened and expected to be opened, would not only enter the stores but would utilize fully the parking and the parcel pick-up facilities of the center. The provision of such facilities furnishes attractive features in the complex of the shopping center to attract potential shoppers. The success of both Weis' store and the Logan shopping center depends upon the extent to which both are able to induce and persuade the public to visit and shop in the area. Both Weis and Logan, by their provision of the parking and pick-up facilities impliedly invited the

public to utilize such facilities. However, that invitation to the public was not without restriction and limitation; it was not an invitation to the general public to utilize the area for whatever purpose it deemed advisable but only to those members of the public who would be potential customers and possibly would contribute to the financial success of the venture.

The invitation to the public, extended by the operation of the parking area and parcel pick-up area, was limited to such of the public who might benefit Weis' and Logan's enterprises, including potential customers as well as the employees of the shopping center concerns. That the invitation to the public was general, as the Union implicitly urges, offends the common sense of the matter.

Moreover, in the case at bar, that Weis had taken special precautions against an indiscriminate use of its property is evident from this record. It had posted a sign on its property which stated "'No trespassing or soliciting is allowed on Weis Market porch or parking lot by anyone except Weis employees without the consent of the management''. A general invitation to certain classes of persons to use the premises and the exclusion of certain other classes of persons from such use is fully consistent with the right of a property owner to the use and enjoyment of his property. See: *Adderley v. State of Florida,* —— U.S. ——, ——, 87 S. Ct. 242, 247 (1966). Those who were picketing Weis' and Logan's property certainly were not within the orbit of the class of persons entitled to the use of the property.

Great reliance is placed by the Union on *Great Leopard Market Corporation Inc. v. Amalgamated Meat Cutters and Butcher Workmen of North America,* 413 Pa. 143, 196 A. 2d 657 (1964). In *Great Leopard,* seven employees of Great Leopard went on strike and the picketing was conducted by blocking the sole driveway entrance to the

supermarket and a foot-bridge which connected a municipal parking lot and the supermarket property. We were of the opinion that the terms of the injunction were too broad and modified the injunction to permit picketing in the front and the rear of the supermarket. In *Great Leopard,* we did not determine either the status of the supermarket property nor whether the employees were trespassers. Moreover, it is to be noted that the pickets were employees of the supermarket whereas in the case at bar the pickets were not and never had been employees of Weis. In our view, *Great Leopard* is not controlling of the instant appeal.

While both Weis and Logan granted to a segment of the public certain rights in connection with the use of their property, such cession of rights did not constitute a grant of all their rights to all the public. To hold that these property owners solicited the use of their property by persons who were attempting to discourage the public from patronizing the store facilities lacks any basis in law or common sense. These pickets, even though engaged in picketing of a peaceful nature, had no right or authority whatsoever to utilize the private property of Weis and/or Logan for such picketing purposes; such use constituted a trespass which very properly was restrained.

The court below had reasonable grounds upon which to grant injunctive relief in the factual situation presented upon this record.

In view of the conclusion reached, we deem it unnecessary to determine whether the instant picketing was for an unlawful purpose.

Decree affirmed. Appellants pay costs.

COHEN, J., files a dissenting opinion in which EAGEN, J., joins.

MUSMANNO, J., dissents.

Dissenting Opinion

COHEN, J.

The majority opinion determines that because the picketing occurred on private property it constituted a trespass and, as such, was properly enjoined by the court below. The majority have chosen to regard the rights attendant to private ownership of property but not the burdens which attach thereto. Thoughout the law, there is recognized the principle that even owners of private property must observe and conform to certain community standards in the use and maintenance of their land, as witness the law of nuisance, zoning and negligence of property owners. And, most especially, as witness the law of labor relations. In *Thornhill v. Alabama,* 310 U.S. 88 (1940), the United States Supreme Court held that peaceful picketing is entitled to the same constitutional protection as other forms of free speech. In *Thornhill,* the pickets were employees of the picketed employer, with whom they had a labor dispute. Only a year later, the Supreme Court extended the constitutional protection under *Thornhill* to a situation wherein the pickets were not employees of the picketed establishment but were members of a union which had unsuccessfully attempted to organize the establishment's employees. *A.F.L. v. Swing,* 312 U.S. 321 (1941). Such "stranger picketing" is, therefore, constitutionally protected. The instant matter cannot be resolved by an analysis limited to the rights associated with private property. Concomitant to these rights are certain restrictions, one of which is that freedom of speech and freedom of the press often require that the rights of private ownership yield. In *Marsh v. Alabama,* 326 U.S. 501 (1946), the Supreme Court stated, "Ownership does not always mean absolute dominion. The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who

use it." 326 U.S. at 506. In *Marsh*, the Court held that the constitutional guarantees of freedom of the press and of religion precluded the enforcement of a state criminal statute against a Jehovah's Witness who distributed religious literature on a street of a company owned town. The court reasoned that because the street was open to the public in general and, though privately owned, served a public function, private management could not curtail precious constitutional liberties.

In the sense that both are freely accessible to the public, a company town and a shopping center are analogous arrangements, and for purposes of considering possible constitutional abridgments should be similarly analyzed. Accordingly, I deem unincisive the majority's failure to recognize any conflict between the rights of private ownership and the constitutionally guaranteed freedoms of speech and of the press. Just as there exists a conflict between the right to distribute printed religious matter in a company town and a statute restricting such activity, so too there exists a conflict between a union's right to picket peacefully and a shopping center's policy not to permit such activity within the boundaries of the center. Only by a thorough consideration of these conflicting values can the issue herein presented be properly resolved.

A case involving a related issue is *Marshall Field & Co. v. NLRB*, 200 F.2d 375 (7th Cir. 1953), wherein the Seventh Circuit decided that a company owned street which divided the store and which was used only occasionally by employees and customers to enter the store, partook of the nature of a city street to an extent sufficient to invalidate a company rule prohibiting non-employees from engaging in union activity in the street. As one observer commented, shopping center grounds are possessed of more attributes of a public way than the Marshall Field owned street because the public would use the shopping center public ways to a far greater extent than

it could use the company owned street. Note, Shopping Centers and Labor Relations Law, 10 Stanford L. Rev. 694, 701 (1958).

Perhaps the most sensible appraisal of what an appellate court must know to decide a shopping center picketing case was set forth in two cases: (1) *Moreland Corporation v. Retail Store Employees Union Local No. 444, AFL-CIO,* 16 Wis, 2d 499, 114 N. W. 2d 876 (1962), wherein the Supreme Court of Wisconsin in an action by the owner of a shopping center seeking an injunction restraining defendant union from picketing on a sidewalk in front of a tenant's store in the center, stated:

> "The issue is whether the respondent, because it has designed its private property for use as a shopping center, has lost its right to ban otherwise lawful picketing. If the record before us clearly established that the property involved is a multi-store shopping center, with sidewalks simulated so as to appear to be public in nature, we would have no difficulty in reaching a conclusion that the property rights of the shopping center must yield to the rights of freedom of speech and communication which attend peaceful picketing. See Freeman v. Retail Clerks Union Local No. 1207, supra, (concurring opinion). See also, Notes, 1960 Duke L.J. 310; Note 73, Harv. L. Rev. 1216, and Note 10, Stanford L. Rev. 694. Compare, Marsh v. Alabama (1946), 326 U.S. 501, 66 S.Ct. 276, 90 L.Ed. 265, in which the United States Supreme Court held that the freedom of religion guaranteed by the First and Fourteenth Amendments prevented the enforcement of a criminal trespass statute against a person distributing religious pamphlets on the sidewalk of a company-owned town. See also, National Labor Relations Board v. Babcock & Wilcox Co. (1956), 351 U.S. 105 76 S.Ct. 679, 100 L.Ed. 975, a decision under the National Labor Management Relations Act involving the right of labor union representatives to circulate literature in an employer's private parking lot. The rationale of the United States Supreme Court in the Babcock & Wilcox Case was used to

help resolve a constitutional free speech issue in Nahas v. Local 905, Retail Clerks Ass'n, supra [144 Cal. App. 2d 808, 301 P.2d 932, rehearing denied 144 Cal. App. 2d 820, 302 P.2d 829].

"In weighing the parties' conflicting interests of private property and free speech, we would want to know the physical characteristics of the shopping center so that our decision on this important policy question could be applied with clarity to other disputes which might arise . . . ." 114 N.W. 2d 879-880.

(2) *Freeman v. Retail Clerks Union Local No. 1207,* 363 P.2d 803 (Wash. 1961) (concurring opinion), wherein a concurring judge observed:

"Under ordinary circumstances, the owner of property can control who goes on it and for what purpose; however, a formal dedication to public use is not necessary to greatly limit that control. The legislature has imposed limitations upon the owner's right to exclude persons from his premises or to refuse service to them on account of race or creed, if the premises are used as a place of public resort. In other instances, entirely apart from the legislative action, the courts have placed a limitation on the control than an owner might exercise over his property, as in company towns.

"In this case, it is conceded that legal title to the property, over which the pickets carried their signs, was in the appellants—and not in the public. The issue presented was whether the property owners, despite their precautions and efforts to protect their right to control the use of the property, had lost the right to prevent the pickets from carrying their signs. (I take it that the pickets, sans signs, were just like other members of the public, and entitled to be where they were.)

* * *

"If instead of being a shopping center, the property in question was merely a forty-acre pasture for contented cows, but a desirable place from which

pickets could carry signs imparting information (relative to the nonunion status of the employees of J. C. Penney Company) to the customers of that company, there could be no questions that the owner would be entitled to an injunction—not to restrain the picketing, but to prevent their trespass on property where they had no right to be."

If the union activity involved herein did not amount to a trespass, then there arises the question of federal preemption. I shall avoid a lengthy discussion of that subject, but want to emphasize that the federal decisions stress the high degree of freedom allowed union activity on the property of the employer. While those cases are not controlling authority, they do indicate that the case before us is not as open-and-shut as the majority believe. Many of the federal cases are thoughtfully analyzed in Annot., 100 L.Ed. 984 (1956).

There is another basis for my disagreement with the majority. By restricting picketing to the berm areas at the entrances and exits, the majority have lent their sanction to an activity which has overtones of a secondary boycott. Again, I do not intend to discuss at length the unlawful and harmful effects which can occur to neutral employers by such activity but recommend 10 Stanford L. Rev. 694, 702-706, which considers the evils and possible cures of picketing at shopping center entrances.

Had the majority opinion made reference to the foregoing inescapable conflicts, I might not enjoy the result any more than I now do, but at least I would be satisfied that the majority opinion recognized the problems involved.

I dissent.

JUSTICE EAGEN joins in this dissent.

APPENDIX B

Opinion and Order of Court of Common Pleas of Blair County, Pennsylvania

The narrow dispute to be resolved in this proceeding is the authority of this Court to restrict the place where union picketing of a non-union business establishment may be conducted.

Pleadings

The pleadings in this case consist of the following:

(a) Plaintiffs' Complaint, with Bond and Affidavits, seeking injunctive relief prohibiting picketing and alleged trespassing on plaintiffs' property and limiting picketing to certain highway berms adjacent thereto; and

(b) Defendant union's motion for dissolution or modification of the preliminary injunction heretofore granted.

Findings of Fact

(1) Plaintiff Logan Valley Plaza, Inc. is the owner of a newly-developed and sizeable commercial complex—a shopping center—known as the Logan Valley Mall, which is situate in Logan Township at the intersection of those public highways known as Plank Road (U. S. Route 220) to the east and Goods Lane to the south.

(2) Separating the Mall from these respective highways are earthen berms at least 10 feet in average width, unbroken except for several paved entrances and exits providing ingress and egress between said highways and the Mall.

(3) Plaintiff Weis Markets, Inc. is the lessee and sole occupant of one of the only two businesses presently open and operating in the Mall (the other being a nearby Sears department store and automobile service enterprise, which is not a party to this proceeding).

(4) The Weis supermarket area proper consists of an enclosed modern market building with an open but covered porch running north and south along its front and a pick-up zone along the porch for the loading of meats and groceries into customer automobiles.

(5) Between this supermarket area and the highway berms aforesaid are extensive parking lots to the east and south of Weis; these macadam lots separate the supermarket from the berms by hundreds of feet, are constructed on the Mall premises and have parking spaces and driveways distinctively lined off on the ground. These areas constitute connecting lots or a common parking lot for Weis and Sears customers, and eventually for other shops and stores in the Mall as they open, and consequently these lessees may be said to have reciprocal rights or easements therein for the use of their business invitees and employees.

(6) On December 8, 1965 plaintiff Weis Markets, Inc. opened for business, employing a wholly non-union staff of employees.

(7) Commencing on December 17, 1965 defendant union through its representatives, none of whom are employees of either plaintiff, engaged with continuity in the following acts of picketing on the Mall premises, inter alia:

(a) small groups of men and women wearing placards reading "Weis Mkt is Non-Union these employees are not receiving union wages or other union benefits" walked back and forth in front of the Weis supermarket, more particularly in the pick-up zone adjacent to the covered porch;

(b) occasional picketing as above described has taken place on the covered porch itself;

(c) handbills have been distributed to members of the public (actual or prospective Weis customers) by said pickets containing more detailed information of the same

nature as that on the placards, but also including the following urgings: "We appeal to our friends and members of organized labor NOT TO PATRONIZE this non-union market" . . . "Please Patronize Union Markets! A & P—QUAKER—ACME" . . . "We still retain the right to ask the public NOT to patronize non-union markets and the public has the right NOT TO PATRONIZE non-union markets."

(8) While such picketing has been persisted in and may have infrequently caused temporary congestion near the supermarket entrances or sporadic stoppage of the flow of vehicles in the pick up zone, and while the pickets refused a request by the Assistant General Superintendent for Weis Markets to move off the Mall proper, the picketing has been peaceful and unaccompanied by either oral threats or actual violence.

(9) Neither plaintiff Logan Valley Plaza, Inc. nor Sears are parties to a labor dispute nor involved in any labor trouble.

(10) On December 27, 1965 we approved plaintiffs' Bond and issued a preliminary injunction restraining defendants from picketing on the supermarket porch, in the pick-up zone, on the Mall parking lot areas or the entrances thereto and the exits therefrom.

(11) On January 4, 1966 hearing was held and testimony taken before this Court on plaintiffs' motion to continue the injunction.

Issue

Should the preliminary injunction be dissolved on the basis that we have no authority to preclude picketing on quasi-public property?

Discussion

We need involve ourselves in no detailed discussion of our jurisdiction and power to regulate the location of

picketing of the type here engaged in so as to prevent trespassing on private property; defendant union concedes such authority, which is supported by the case law of this Commonwealth. See Weis Markets Inc. v. Local 195, AFL-CIO, 34 D. & C. 2d 700 (1964); Bloomsburg Mills, Inc. v. Textile Workers Union, Local 667, 78 D. & C. 549, 41 Luz. L. Reg. 53 (1950). A number of unreported cases decided within the past several years—all Weis Markets, Inc. v. Amalgated Meat Cutters and Butcher Workmen of North America, Local No. 195, AFL-CIO et al.—in Berks, Dauphin, Lancaster, Lebanon, Montgomery and York Counties have been brought to our attention and demonstrate how firmly settled this principle is in preservation of the sanctity of privately-owned property.

The defendant union argues, however, that the rule finds no application in the instant matter because a shopping center constitutes quasi-public property and, therefore, picketing on the Mall premises is not a trespass, but merely a lawful exercise of the constitutional right of free speech. The cases cited as controlling authority for this distinction are Great Leopard Market Corporation, Inc. v. Amalgamated Meat Cutters and Butcher Workmen of North America, Local 196, 196 A. 2d 657, 413 Pa. 143 (1964); Weis Markets, Inc. v. Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 195, AFL-CIO et al., Equity Docket No. 13, C.C.P. Lancaster Co. (1964); and Weis Markets Inc. v. Local 195, AFL-CIO, supra.

While the Great Leopard Case did deal with the picketing of a store fronting on a parking lot both of which were situate in a shopping center, our Supreme Court holding that peaceful picketing was permissible in front and to the rear of the store, it seems significant that the pickets were all striking employees of the plaintiff store itself; a distinguishing feature in the case before us is that all of the pickets are strangers, non-employees of the plaintiff store,

none of whose workers are out on strike. There the Foodarama market was involved in labor trouble; here the Weis supermarket is not engaged in labor trouble. Logic and reason would therefore dictate that the interests of the pickets in the Great Leopard Case were so directly and vitally related to the store itself that they cannot properly be labeled trespassers. Secondly, nothing in the Great Leopard Case clearly shows that an equally suitable area outside of the shopping center but in the immediate vicinity thereof existed which could be effectively utilized as a situs for picketing; in the present case, however, plaintiffs have affirmatively shown that access to the subject property may be had only from the two highways hereinbefore described and that both have berms of sufficient width appropriate to accommodate pickets.

As for the proceeding to Equity Docket No. 13, C.C.P. Lancaster Co., its total inapplicability to the defense contention is obvious when we compare both the relative locations there prevailing and the relief therein requested with the building area and the prayer of the complaint before us here. There the Weis supermarket in the Manor Shopping Center fronted on a concrete sidewalk running along the western edge of a public highway known as Litiz Pike. It is clear that this public sidewalk is the "walk area" referred to by the court decree limiting the total number of pickets at any one time to a maximum of 5, as follows:

> "(e) Three (3) of the aforesaid pickets may picket on the curb line of the walk area immediately in front of the Weis Market Building and may not be less than ten (10) feet apart.
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> (f) The remaining two (2) pickets may be placed by the defendants as they choose in the vicinity of the Weis Market building, but may not be on the walk area and shall be the same distance of ten (10) feet

apart from each other as well as the other three (3) aforesaid pickets."

Whether the Weis parking lot in that case was situate to the side of the supermarket or whether it intervened between the front of the supermarket and the concrete public sidewalk does not appear from the complaint, but this is immaterial. It is obvious that the "walk area" was neither a part of the Weis supermarket proper nor on the shopping center premises whatsoever, but rather occupied a location essentially the same as the highway berms in the present case; that is to say, the "walk area" was a boundary of and immediately outside the shopping center, separating it from the highway called Lititz Pike. We do not interpret that part of the decree allowing 2 pickets to be placed "in the vicinity of the Weis Market building" as permitting limited picketing either on the supermarket porch or in the adjoining parking lot; our belief is that it means they shall picket off the premises anywhere beyond the public sidewalk. Even should defendant union's unsupported inference have merit, that either or both paragraphs (e) and/or (f) of the decree above-cited sanction picketing on the shopping center premises, the answer is that such paragraphs are verbatim wording of paragraphs (j) and (k), respectively, of the relief requested in the complaint; in this event the inescapable observation would be that plaintiff there was not trying to exclude picketing from the shopping center, and if such an issue was not involved, the case is inapposite to the situation now ours for disposition.

Defendant relies upon the dictum at p. 703 of Weis Markets Inc. v. Local 195, AFL-CIO, supra, wherein the opinion comments that other jurisdictions as well as Pennsylvania (in the Great Leopard Case) have determined that unions may enter upon shopping center premises for purposes of picketing business establishments located therein because of the quasi-public nature of such premises. We

have already distinguished the Great Leopard Case from the particular facts in the instant case and, absent controlling appellate direction in our own Courts, we need not bow to the authority of decisions from sister-states when the wisdom of their rulings is debatable. We would point out to defendant the words following thereafter at pp. 703-04:

> "Defendants argue that plaintiff has invited the public generally to enter upon its property . . . . The fault in this argument is that plaintiff has invited the public to enter upon its property, park their automobiles and shop in the store. *There is no direct or implied invitation to anyone to enter upon the property for the purpose of driving prospective customers away.* * * *
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> * * * If defendants were to be permitted on plaintiff's property for peaceful picketing purposes, it would be no different than to claim that a civil rights group had the right to hold a demonstration or a rally on plaintiff's property, or a political rally or a religious service, or a dance, or an athletic contest, or any other public gathering. In our judgment its rights of private property were not relinquished or destroyed when plaintiff constructed its store and paved the remainder of its land for a parking area. Simply stated, it is our opinion that no one has a right to go on plaintiff's property except those who it invites, specifically or by implication, and defendants were not only not invited but were requested to leave." (Emphasis added.)

While we are in complete accord with the above-cited observation of Judge Johnstone relative to private property, we fail to see why it should not have equal force relative to shopping centers. Such a commercial premises may properly be classified as quasi-public only for the use of

lessees, employees and business invitees, and those not falling within either group are not upon the premises for the purposes for which the enterprise was constructed and intended. Pickets should be precluded from arguing successfully the quasi-public nature of the Mall unless they can demonstrate their inclusion within those classes of the public expressly or impliedly invited to use the shopping center property. To us the very employment of the term "quasi-public" by the defendant manifests its full realization that the invitation is limited or qualified, and not extended to the whole general public as such regardless of purpose. Would the defense seriously contend that one has the right to park his vehicle on the Mall parking lot in order to shop at a store located off of the Mall premises? To argue that such action does not constitute a trespass would be ridiculous. The pickets in this case are certainly in no better position, to say the least.

It is unnecessary for us to base our decision solely on the ground of trespass to realty, however. Regardless of this question, we entertain no doubt that we do not have the right totally to prohibit the picketing of the Weis supermarket, but we are invested with authority to balance the equitable considerations and to impose reasonable controls, which is all that plaintiffs seek by their complaint. Cf. Flashner v. Amalgamated Meat Cutters & Butcher Workmen of North America, Local 195, Etc., 37 D. & C. 337 (1939). The nature of the handbills which have been distributed borders on conduct evidencing a "course of conduct intended or calculated to coerce an employer to compel or require his employees to . . . become members of or otherwise join [defendant] labor organization", in which case the picketing, although peaceful, is for an unlawful purpose. See the Labor Anti-Injunction Act of 1937, June 2, P. L. 1198, Sec 4(b) (as amended), 43 P.S. Sec. 206d(b); Anchorage, Inc. v. Waiters & Waitresses Union, Local 301 et al., 119 A. 2d 199, 383 Pa. 547 (1956);

Flashner v. Amalgamated Meat Cutters & Butcher Workmen of North America, Local 195, Etc., supra; Twin Grill Company, Inc., et al. v. Local Joint Executive Board et al., 60 D. & C. 379 (1947). Even peaceful picketing, as here, may be unlawful because of the objective or end result which is sought.

The purpose of picketing is to exert stronger influences than those which may be accomplished by the employment of other modes of communication. When peaceful picketing is accompanied by the distribution of handbills of a strictly informative and factual nature, it is a proper exercise of the constitutional right of freedom of speech; it is quite another matter, however, when such handbills go beyond this stage and approach intimidation of that vulnerable segment of the public who may desist from patronizing plaintiff's establishment, not out of sympathy or agreement with defendant union's cause, but out of apprehension for individual wellbeing. Defendant may say that the handbills here involved merely appeal to and request shoppers to make their purchases elsewhere, but from the repeated emphasis "NOT TO PATRONIZE" it might well appear to the scanning recipient of one of these handbills that his or her right to choose is limited and that the notice is meant to serve as an implicit mandate or warning.

Not being specifically requested directly to restrict defendant union in the use of handbills we will refrain from so doing. We will, however, discourage whatever possibility of personal confrontation may otherwise exist by making permanent the injunction as previously decreed. By limiting the pickets to the highway berms we are not diminishing their ability to communicate with and inform the public, since there are no other means of vehicular adit to or exit from the Mall premises; we are thereby actually increasing their audience, for the placards or banners will be plainly legible to passing motorists on both highways. In

addition, the berms are of sufficient width to serve as appropriate walkways without exposing the pickets to traffic perils—it would seem to us that greater danger to their physical welfare had existed in the Weis pick-up zone where they were in direct line of vehicular traffic, moving however slowly. They will be still in the vicinity and clearly within view of the Weis supermarket.

We rest our authority on the holding in Wortex Mills, Inc. v. Textile Workers Union of America, C.I.O. et al., 85 A. 2d 851, 857, 369 Pa. 359, 369 (1952), wherein our Supreme Court summarized the case law on this point as follows:

> "A STATE COURT MAY ENJOIN UNLAWFUL PICKETING OR PICKETING WHICH IS CONDUCTED IN AN UNLAWFUL MANNER OR FOR AN UNLAWFUL PURPOSE. PICKETING, IF PEACEFUL, ORDERLY AND FOR A LEGITIMATE OR LAWFUL PURPOSE, IS LEGAL AND WITHIN THE PROTECTION OF THE CONSTITUTION. HOWEVER A STATE IS NOT REQUIRED TO TOLERATE IN ALL PLACES AND IN ALL CIRCUMSTANCES EVEN PEACEFUL PICKETING BY AN INDIVIDUAL; IT IS WELL ESTABLISHED THAT THE METHOD OR CONDUCT OR PURPOSE OR OBJECTIVE OF THE PICKETING MAY MAKE EVEN PEACEFUL PICKETING ILLEGAL." (italics the Court's)

CONCLUSIONS OF LAW

(1) The picketing in this case is being conducted in an unlawful manner and for an unlawful purpose, that is, it constitutes a trespass on the Mall premises and is designed, at least in part, to pressure Weis Markets, Inc. to compel its employees to join a union.

(2) Under these circumstances we are not precluded from exercising reasonable controls over such picketing,

the Pennsylvania Anti-Labor, Injunction Act of 1937 (as amended) being inapplicable.

Accordingly we enter the following

ORDER

And Now, this 14th day of February, A.D., 1966, after hearing on the preliminary injunction heretofore issued in the above-captioned matter, at which hearing the defendant union was represented by counsel, and upon consideration of the testimony and exhibits adduced at said hearing, it is Ordered, Adjudged and Decreed that: (a) the defense motion to dissolve or modify said preliminary injunction be and the same is hereby denied and dismissed; and

(b) said preliminary injunction is hereby continued until further adjudication of this case or until further order of this Court, the security heretofore entered by the plaintiffs also to be continued.

By the Court,
John M. Klepser,
P. J.

APPENDIX C

Relevant Provisions of the National Labor Relations Act, as Amended (61 Stat. 316, 29 U.S.C. § 141, Et Seq.)

SEC. 2. When used in this Act—

* * *

"(3) The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment. . . .

* * *

(9) The term 'labor dispute' includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixed, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

* * *

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

UNFAIR LABOR PRACTICES

• • •

(b) It shall be an unfair labor practice for a labor organization or its agents—

• • •

(4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is:

• • •

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9: Provided, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

• • •

Provided, That nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to

recognize under this Act: Provided further, That for the purposes of this paragraph (4) only, nothing contained in such paragraph shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution.

• • •

(7) to picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer where an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective bargaining representative, unless such labor organization is currently certified as the representative of such employees:

"(A) where the employer has lawfully recognized in accordance with this Act any other labor organization and a question concerning representation may not appropriately be raised under section 9(c) of this Act,

"(B) where within the preceding twelve months a valid election under section 9(c) of this Act has been conducted, or

"(C) where such picketing has been conducted without a petition under section 9(c) being filed within a reasonable period of time not to exceed thirty days from the commencement of such picketing: Provided, That when such a petition has been filed the Board shall forthwith, without

regard to the provisions of section 9(c)(1) or the absence of a showing of a substantial interest on the part of the labor organization, direct an election in such unit as the Board finds to be appropriate and shall certify the results thereof: Provided further, That nothing in this subparagraph (C) shall be construed to prohibit any picketing or other publicity for the purpose of truthfully advising the public (including consumers) that an employer does not employ members of, or have a contract with, a labor organization, unless an effect of such picketing is to induce any individual employed by any other person in the course of his employment, not to pick up, deliver or transport any goods or not to perform any services.

"Nothing in this paragraph (7) shall be construed to permit any act which would otherwise be an unfair labor practice under this section (8)(b).

* * *